

19-5420
No. 18-12567

ORIGINAL

Supreme Court, U.S.
FILED

MAY 29 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Kendrick Terrell — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Courts of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kendrick Terrell

(Your Name)

Federal Prison Camp, 2600 Hwy 301 South,

(Address)

Jesup, GA 31599

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Whether the Petitioner's Sixth Amendment Rights were violated by plain error made in calculating Petitioner's sentence, and the numerous ways that Petitioner's Counsel was ineffective assistance of Counsel in which the United States Constitution guarantees.

II. Whether or not if the Petitioner's Eight Amendment Rights were violated when the Government enhanced Petitioner's sentence by using prior charges in which Petitioner did not serve one year or more in prison.

III. Whether increasing Petitioner's sentencing Guidelines from 10-to-life, to 20-to-life, which left Petitioner with a longer sentence after Petitioner asked Counsel to file an appeal.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Alley, Todd C., Former Assistant United States Attorney;

Anand, Justin S., United States Magistrate Judge;

Becker, Lauren L., Attorney for Co-Defendant Evans;

Berne, Steven Paul., Attorney for Co-Defendant Ross;

Bly, Christopher C., Assistant United States Attorney;

Cognac, Paul M., Attorney for Co-Defendant Johnathan Evans;

Cobham Dawson, Allison, Attorney for Co-Defendant Hollis;

Evans, Antonio, Co-Defendant;

Evans, Honorable Orinda D., United States District Court Judge;

Finlayson, L. Burrton, Attorney for Co-Defendant McGinty;

Hollis, Raymond, Co-Defendant;

Horn, John A., Former United States Attorney;

Jenson, Jr., Dovre Christian, Attorney for Appellant;

King, Ethernia F., Former Attorney for Co-Defendant Ross;

Maloy, W. Bruce, Attorney for Co-Defendant Hollis;

McBath, Ronald, Co-Defendant;

Pak, Byung J., United States Attorney;

Roemer, Mary Christine, Former Assistant United States Attorney;

Ross, Terry, Assistant United States Attorney;

Schansman, Cassandra Julier,

LIST OF PARTIES CONTINUED

Shein, Marcia G., Attorney for Co-Defendant McGinty;

Terrell, Kendrick, Appellant;

United States of America, Appellee;

Zimmerman, Lawrence J., Attorney for Co-Defendant Ross;

No publicly traded company or corporation has an interest in the outcome of this case or the Writ.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITIONER FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Courts of Appeals for the Eleventh Circuit (R.27-2) February 20, 2019. The Appeal number 18-12567-H Denying the application of a Certificate of Appealability for the Petitioner's \$2255 Motion To Vacate, Set Aside, Or Correct The Sentence Of A Person In Federal Prison and has a secondary number: 1:05-cr-0026268-ODE-JSA-1. It's reported at Page 1 of this motion.

[x] The Opinion of the United States District Court case No:1:17-cv-002849-ODE, the District Court ORDERED AND ADJUDGED Petitioner's \$2255 Motion and denied Petitioner's Certificate of Appealability at the same time. Reported on page 1 of this motion.

On February 21, Petitioner received a letter from the district court that Petitioner had 21 days to file a Motion to Reconsider. Petitioner's filed a Motion to Reconsider following the district court's instruction and the court dismissed the said motion saying that they had no jurisdiction to hear the Motion to Reconsider because the Courts of Appeals had to hear the motion. [Doc.No.261]. See Exhibit "A", attached letter from the district court.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 20, 2019.

☒ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 13, 2018, and a copy of the order denying rehearing appears at Appendix "A"

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

APPENDIX "A"

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition is premised on the Sixth and Eight Amendments of the United States Constitution and Rule 52(p) of Federal Rules of Criminal Procedures:

STATEMENT OF THE CASE

1. The Petitioner was indicted in the United States District Court for the Northern District of Georgia, Atlanta Division in June, 2005, for a violation of 21 U.S.C. §846, 841(B)(1)(A)(I), for Conspiracy To Possess of Herion With Intent to Distribute, count one(1). and 21 U.S.C. §841(A)(1)(I), Distribution of 50 grams or more of Crack Cocaine, count Twelve(12).

2. The Petitioner entered a plea deal with the Government and was sentenced to a term of 240 months in Federal Prison and 120 months of supervised release after being released from prison.

3. The Petitioner was sentenced by the Honorable u.S.District Court Judge Orinda D. Edvans, on August 11, 2006.

4. July 23, 2017, The Petitioner filed a \$2255 Motion to Vacate, Set Aside, or Correct a Sentence of a Person in Federal Prison.

5. The Petitioner file the said motion because at sentencing the Petitioner's believes that his sixth (6th) Amendment Rights were violated because he received a enhancement for prior charges that should not have been use to enhanced his sentence because Petitioner's Counsel was ineffect assistance for not arguing that the prior charges should not have been used to enhance his sentence.

6. The Petitioner received a three(3) point reduction for promptly accepting responsability pursuant to 3E1.1

7. The Petitioner believes that had counsel argued that his enhancement was not legal or correct, that the sentence would have been 10 years to life, and not a twenty(20) year mandatory minimum leaving petitioner with a cruel and lengthy sentence.

8. On April 26, 2018, The Magistrate Judge recommended that a COA be denied on the Petitioner's §2255 Motion and on June 01, 2018, The District Court agreed that the Petitioner's COA be denied for being untimely.

9. Terrell asserts that his §2255 Motion was not untimely because Terrell is arguing that his sixth and Eight Amendment Rights were violated when his attorney did not argue against the priors being used to enhance his sentence and by not filing a Direct Appeal that Terrell asked for.

10. The Government and District Court denied Terrell's §2255 Motion as untimely, however, at the same time the Court ordered the Government to respond to Terrell's §2255 Motion within 30 days from August 03, 2017, and made it due by September 02, 2017, The Government says that it inadvertently missed this order.

11. The District Court also stated that pro se status does not excuse a defendant's "Lack of compliance with a deadline imposed by law,". However, the Government did the same.

12. The U.S Courts of Appeals agreed with both the Government and the District Court and DENIED Terrell's §2255 Motion To Vacate, Set Aside, Or Correct The Sentence Of A Person In Federal Prison.

REASONS FOR GRANTING THE PETITION

1. In the case of Bruce Theodore Smith, Petitioner v. United States, 5:07-cr-00048-RS-3. Smith appeals the denial of his "Motion Under The Rule of Equity For Good Cause," construed by the District Court as a petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2241.

Smith argues that the district court erred in denying him leave to appeal his convictions and sentence because his attorney, Christopher Patterson, repeatedly refused to file an appeal on his behalf. This case is like terrell's case and the government agreed that Smith's case should be remanded back to the District Court for further review.

2. The Court said we construe pro se filings liberally to afford review on any "legally justifiable base." Sanders v. United States, 113 F.3d 1172, 1175 (11th Cir. 2005).

3. The Petitioner argues that the enhancements he receive at sentencing for prior charges were unconstitutional as proved by citing United States v. Price, 526 F.3d. 285 (5th Cir. 2008), and cases cited in Petitioner's §2255 Motion. When reviewing a sentence that was enhanced by a prior drug case, the USSG §4B1.2(b), defines the term "controlled substance offense" as an offense under Federal or state Law, punishable by imprisonment for a term exceeding one year.

4. The case used to enhance Petitioner's sentence should have not been used because Petitioner never was incarcerated for a period exceeding ONE YEAR.

5. In The Supreme Court decision in Carachuri-Rosendo v. Holder, 560 U.S. 563, 130 S.Ct. 2577, 177 L.Ed.2d 68 (June 14, 2010), in support of her claims that her sentence was improperly enhanced

based on a prior Felony Drug Conviction, and that counsel was constitutional ineffective for failing to raise this issue either at trial or appeal. Petitioner's claims are exactly the same.

6. The Supreme Court ruled 7-2 on June 18, 2018, that an error in calculating the sentencing guideline is an error that must be addressed by resentencing the defendant, even if no one noticed the error when it occurred.

The court must correct the mistake, even if the sentence imposed falls within the correct guideline range.

7. The majority touts that finality is an important principle of vital importance." [Without justice, finality is nothing more than a bureaucratic achievement, "Gilbert, 640 F.3d. 1292, 1337 (11th Cir. 2011) (en banc) (Hill, J. dissenting), so we should resist the temptation to "prostate[] ourselves] at the altar of finality, draped in the sacred shroud of judicial restraint."

8. In the case of Keving Spencer v. United States, Circuit Judge MARTIN, joined by WILSON AND JORDAN, Circuit Judges, dissenting: The Majority and dissenting opinions issued by the Court today set out the academic debate over the scope of relief provided by 28 U.S.C. § 2255 to prisoners now in Federal Prisons, based on incorrect sentences mistakenly imposed by Federal Judges.

9. The sentencing judge's statements suggested that Spencer's sentence would be different in the absence of the career-offender enhancement, "instead of looking at a 32, you have been looking at a level 23. It's in essence, half the sentence, in essence." Sentencing Tr. at 20 (Record No. 49). The erroneous enhancement increased Spencer's guideline range from 70 to 87 months to 151-180 months.

This is the same argument that petitioner asserts that without the enhancement for the prior charges his sentence would have been substantially lower, starting at 120 months at the low end of the sentencing guideline range.

10. "When reviewing the length of a sentence for reasonableness, we will remand for resentencing if we are left with the definite and firm conviction that the district court committed a clear error of judgement in weighing the §3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." Citing *United States v. Williams*, at 1363, pg 7 of No. 06-13584-FF in additio, the court held:

"We note that the district court did not expressly indicate that if considered the §3553(a) factors and did not provide any comment regarding Stevenson's sentence other than that he was sentenced at the low end of the guideline, this is similar to Petitioner's case.

"Petitioner asserts that the facts of his case, the sentence was not reasonable, and that counsel failed to argue for a lower sentence than the one he received because of the enhancement. Counsel violated petitioner's Sixth Amendment Rights to a competent attorney, and his Eighth Amendment Rights leaving petitioner with a cruel and unreasonable sentence.

11. Petitioner asserts that he has met both prongs of Strickland v. Washington, and that no other counsel would have not argued the illegal enhancement and that counsel's poor performance prejudice Petitioners when he received 240 months.

12. Petitioner's counsel was also ineffective by advising Petitioner that he would only receive 120 months, see Tse v. United

States, 290 F.3d 462 (1st Cir.2002), (misadvise that defendant could not received more than a ten year sentence or be prosecuted on more than one count without violating extradition order stated claim of ineffective assistance remanding for a hearing). This case is similar to Petitioners because counsel advised him that he would get a sentence lower than the one he received. See also United States v. Colon-Torrez, 382 F.3d 76 (1st Cir.2004).

13. In Geral Wheeler v. United States, Wheeler won his case when a three judge panel of the court said his claim could go forward after a retroactive change in the law rendered his sentence too high. It would have been too late for him to challenge it, but the panel applied the so-called "Savings Clause" to help him. (Criminal Law Reporter (SSN 0011-124), (Vol.103, NO.12), page 301.

This case is similar to Petitioner's case because the Supreme Court on June 18, 2018, that sentencing calculation errors should be fixed. SCOUTS Says(1), A mistake calculation under federal sentencing guideline that is plain and affects a defendant's right should be corrected. They also stated "such a mistake will" in the ordinary case, as here, seriously affect the fairness, integrity, or public reputation of judicial proceedings." The court said in an opinion by Justice Sonia Sotomayor.

14. Citing United States v. Price, 516 F.3d 285 (5th Cir.2008), overview Defendant's presentence report relied on USSG 2K2.1(A)(2), to calculate a sentence enhancement, establishing a base offense level 29, Defendant had two prior convictions; one was charge that defendant, did knowingly and intentionally deliver, to with actual transfer, constructively transfer and offer to sell a controlled substance, to distribute cocaine, in violation of Tex.

Health & Safety Code, And. §4B1.112(A)..Read US-v-Lee, 419 F.3d.APPX.
480 LEXIS 5869 (11th Cir.2011) (US-v-Lianos-Angostdero, 486 F.3d
1194(11th Cir.2007)).

15. To help ensure that certainty and fairness in sentences, federal courts are required to consider the advisory USSG, prior to sentencing, the United States Probation Office prepares a presentence report to help the court determine the applicable sentencing guideline range goes unnoticed by the court and the parties. In the United States v. Olano, 507 U.S. 725:(1) the error was not "intentionally relinquished or abandoned," (2) the error, and (3) the error "affected the defendant's substantial rights. Petitioner believes that this illegal enhancement should be corrected and petitioner's sentence should be lowered.

CONCLUSION

The United States Supreme Court substantially changed the landscape of criminal sentencing in the federal system by the case of Booker v. United States, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed. 2d 621 (2005). The Court held that the sentencing guidelines of the U.S.S.G. for specific criminal offenses were "effectively advisory" and not mandatory.

Therefore, for the foregoing reasons in this Motion, Petitioner prays that this Honorable Court will hear and grant the relief Petitioner is requesting. The Petitioner for a Writ should be granted. Respectfully submitted,


Kendrick Terrell

Date: 7/18/19